

³ See 47 U.S.C. § 503(b)(2)(B). This section authorizes the Commission to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act.

available at rates that are reasonably comparable to rates charged for similar services in urban areas.⁴

To ensure the realization of this goal, the statute provides:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.⁵

The statute further requires that, within 15 months of the enactment of the 1996 Act, the Commission implement the changes to its regulations necessary to achieve the statutory goal of universal service.⁶ The Commission issued a series of orders to comply with this important portion of the 1996 Act.⁷

3. Our regulations restate the statutory requirement that telecommunication carriers "must contribute to the universal service support programs."⁸ In the *Universal Service Order*, we named the National Exchange Carrier Association ("NECA") as the temporary administrator of the universal service support mechanisms.⁹ Subsequently, we directed NECA to create, as a condition of serving as temporary universal service administrator, an independent, not-for-profit subsidiary, the Universal Service Administrative Company ("USAC"), to administer temporarily the universal service support mechanisms for high cost areas and low-income consumers, and to perform billing and collection functions for the universal service support mechanisms for schools

⁴ 47 U.S.C. § 254(b)(3).

⁵ 47 U.S.C. § 254(d). *See also* 47 U.S.C. § 153(44) (defining "telecommunications carrier"); 47 U.S.C. § 153(46) (defining "telecommunications service"); 47 U.S.C. § 153(43) (defining "telecommunications"); 47 C.F.R. § 54.703(a) (codifying in Commission regulation the statutory requirement that telecommunications carriers "must contribute to the universal service support programs").

⁶ 47 U.S.C. § 254(a)(2).

⁷ *See Federal State Joint Board on Universal Service, Report & Order*, 12 FCC Rcd 8776 (1997) (*Universal Service Order*); *Federal State Joint Board on Universal Service, Order on Reconsideration*, 12 FCC Rcd 10095 (1997); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Report & Order and Second Order on Reconsideration*, 12 FCC Rcd 18400 (1997) (*NECA Governance Order*); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc. Federal State Joint Board on Universal Service, Order on Reconsideration, Second Report & Order, and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 12437 (1997).

⁸ *See* 47 C.F.R. § 54.703(a).

⁹ *See Universal Service Order*, 12 FCC Rcd at 9216-17, ¶ 866.

and libraries and rural health care providers.¹⁰ In that connection, we directed that USAC distribute, receive, and process the Universal Service Worksheet on which carriers are required to report certain categories of revenue used to calculate their universal service contribution; we further directed that USAC adjust carriers' contributions in accordance with contribution factors established by the Commission.¹¹ Given the importance of ensuring universal service, our regulations provide that the failure "to submit the required . . . contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law."¹²

4. USAC received ConQuest's Universal Service Worksheet on or about September 9, 1997.¹³ Based on the information reflected in the worksheet, the accuracy of which was certified by ConQuest's vice president and secretary, Marianne Townsend, USAC sent ConQuest an invoice for its first universal service monthly contribution.¹⁴ The invoice was dated January 15, 1998 and set out ConQuest's liability to the high cost, low income, schools and libraries, and rural health care funds.¹⁵ The invoice stated that payment of the requested amount was due by February 16, 1998. ConQuest failed to submit its contribution by the due date stated in the invoice.¹⁶

5. On February 26, 1998, Nancy Thomas, USAC's Billing and Collection Manager, wrote to ConQuest at the address included on ConQuest's Universal Service Worksheet, requesting payment by March 4, 1998.¹⁷ Subsequently, on March 6, 1998, USAC wrote to

¹⁰ See *NECA Governance Order*, 12 FCC Rcd at 18415, ¶ 25.

¹¹ See *NECA Governance Order*, 12 FCC Rcd at 18424-25, ¶ 43-45. See also 47 C.F.R. § 54.711(a).

¹² 47 C.F.R. § 54.713.

¹³ See Declaration of Edward English, ¶ 3 (English Declaration). The English Declaration, Appendix 1 to this notice, is being placed under seal because it includes the figure for ConQuest's universal service contribution, information which third parties potentially could use to estimate ConQuest's revenues. In the future, however, regardless of carrier requests for confidentiality, we will be disinclined to withhold this type of information when issuing NALs to enforce carriers' universal service obligations.

¹⁴ *Id.*

¹⁵ See 47 U.S.C. § 254(b)(3) (announcing universal service goal for "low-income consumers and those in rural, insular, and high cost areas"); *id.* § 254(b)(6) (announcing universal service goal for "[e]lementary and secondary schools and classrooms, health care providers, and libraries").

¹⁶ See English Declaration, ¶ 3.

¹⁷ See *id.* ¶ 4.

ConQuest again requesting payment of the contribution.¹⁸ On February 23 and March 9, 1998, and one other occasion in March, USAC personnel telephoned ConQuest to discuss the overdue universal service contribution.¹⁹ During the March 9 call a representative of ConQuest told USAC's representative that payment would be forthcoming.²⁰ ConQuest has disputed neither that debt was due and owing, nor the amount of the debt. As of this date, however, ConQuest has not paid to USAC any portion of the amount that it owes for January 1998, nor has it provided any explanation for its failure to make payment.²¹ USAC's records also indicate that ConQuest has failed to pay its assessed contributions for February, March, April, May and June 1998.²²

6. Based on the foregoing, we conclude that ConQuest is apparently liable for forfeiture for willful or repeated violation of Section 254 of the Act and the Commission's rules governing universal service contributions.²³ Since February 16, 1998, ConQuest has failed to pay its January universal service contribution, the amount of which was calculated by USAC from figures that ConQuest itself reported in its Universal Service Worksheet. As explained above, Section 254(d) of the Act, as well as our Rule 54.703(a), require that telecommunication carriers make universal service contributions in the amount prescribed by USAC. In the absence of any evidence indicating that ConQuest is unable to pay the assessed contribution, it appears that its failure to make the required contribution amounts to a willful or repeated violation of the Act and the Commission's rules. As we have noted above, it appears that ConQuest is currently also in arrears for its assessed universal service contributions for February through June of this year. The failure to make timely payment of its contributions for each of these months represents an independent violation of the Act and our rules; however, we do not currently find apparent liability for these violations. Nevertheless, these added violations could form the basis for additional notices of apparent liability in the future.

7. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to one hundred ten thousand dollars (\$110,000) for each violation, or each day of a continuing violation, up to a statutory maximum of one million, one hundred thousand dollars (\$1,100,000) for a single act or failure to act.²⁴ In exercising this forfeiture authority, the

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See 47 C.F.R. §§ 54.703(a), 54.713.

²⁴ 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80. The Commission recently amended its rules by adding a new subsection to its monetary forfeiture provisions that incorporates the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321), enacted on April 26, 1996. See *Amendment of Section*

Commission is required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²⁵ For purposes of determining an appropriate forfeiture penalty in this case, we view ConQuest's delinquency as a single, continuing violation, which began on February 17, 1998, the day after its universal service contribution was due, and is currently of 175 days in duration. After weighing the circumstances surrounding the violation, and the central importance of universal service to the goals of the 1996 Act, we find that ConQuest is apparently liable for a forfeiture of seventy thousand and thirty-three dollars (\$70,033) for failure to make its universal service contribution in a timely manner. This forfeiture figure is based in part on ConQuest's universal service liability, which, in turn, was based on revenue figures that it reported in its Universal Service Worksheet. Accordingly, the calculation of the forfeiture amount is set out in Appendix 2 to this notice, which will remain under seal.²⁶ ConQuest will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.²⁷

VI. CONCLUSIONS AND ORDERING CLAUSES

8. We have evaluated the information relating to ConQuest's obligation to pay its universal service contribution and find that ConQuest apparently has failed to pay its contribution in a timely manner. We conclude that ConQuest thereby apparently willfully or repeatedly violated Section 254 of the Act and Commission rules and orders governing universal service contributions, and that ConQuest's conduct warrants a forfeiture in the amount of seventy thousand and thirty-three dollars (\$70,033). We further note that ConQuest remains liable to USAC for the full amount of the assessed universal service contribution. Payment of this forfeiture in no way relieves ConQuest of its obligation to pay the previously assessed contribution amount.

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that ConQuest Operator Services Corp. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of seventy thousand and thirty-three dollars (\$70,033) for willful or repeated violation of Section 254 of the Act and the Commission's universal service rules and orders.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, ConQuest Operator

1.80 of the Commission's Rules, 12 FCC Rcd 1038 (1997).

²⁵ 47 U.S.C. § 503(b)(2)(D).

²⁶ *See supra* n. 13.

²⁷ 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

Services Corp. SHALL PAY the full amount of the proposed forfeiture²⁸ OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

11. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to John Burchett, President, ConQuest Operator Services Corp., 5500 Frantz Road, Suite 125, Dublin, Ohio, 43017.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas,
Secretary.

²⁸ The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on the ConQuest Operator Services Corp.'s check or money order to "NAL/Acct. No. 816EF0004." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.